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June 20, 2024

VIA ECF

Hon. Brian R. Martinotti, U.S.D.J.
United States District Court, District of New Jersey
Frank Lautenberg Post Office & U.S. Courthouse
2 Federal Plaza, 3rd Floor
Newark, New Jersey 07102

Re: *In Re: Insulin Pricing Litigation*, Case No. 2:23-md-3080-(BRM/RLS)

Dear Judge Martinotti:

Plaintiffs write to address inaccuracies in Defendants' June 12 letter. As an initial matter, Plaintiffs have proposed the very thing that Defendants expressed their desire to achieve during meet and confers—three tracks in this MDL. Plaintiffs also made very clear how the litigation would proceed if Plaintiffs' request was granted: (1) the DPP Action would be consolidated into the TPP PBM Actions and the TPP Track would be re-named the DPP Track (any remaining TPP Manufacturer Actions will be dismissed or will become part of the DPP Track); and (2) a new leadership structure would be appointed combining certain previously-appointed leadership. This proposal would efficiently move this MDL forward and address concerns Defendants raised in meet and confers.

Despite this, Defendants attack Plaintiffs' leadership, present an incomplete and misleading description of the relevant TPP Plaintiffs, and make premature and unfounded legal arguments that should be saved for any forthcoming motion to dismiss. Specifically, while Defendants assert that Third-Party Payers are not direct purchasers—purportedly because they do not purchase directly from the Manufacturer Defendants—their letter fails to mention that Third-Party Payers directly purchase insulin products from the PBM Defendants. Such purchases constitute “direct” purchases under *Illinois Brick*. As such, Third-Party Payers will assert the same federal claims as the federal claims made in the DPP action, and Plaintiffs' proposal is therefore the most efficient way for this MDL to proceed.¹

¹ While Defendants claim the proposal presented in the Consolidation Letter was never discussed with them, the proposal was emailed to Defendants on June 4, the day before Plaintiffs' letter was filed. Moreover, numerous meet and confers were held between the parties, and Plaintiffs'

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And to be clear, as Defendants appear to be confused on this point, the TPP Manufacturer Class has agreed to the proposal. Indeed, Mr. Ecklund—who was appointed by this Court to serve on the Steering Committee for the TPP Manufacturer Class—signed Plaintiffs’ June 5 letter. There is no disagreement between Plaintiffs’ counsel and any lingering “confusion” should be resolved by this correspondence. Moreover, the process that Defendants seek—where any disagreements are resolved among Plaintiffs’ counsel before presenting any proposal to the Court—is exactly what happened here. As Defendants recognize, it is ultimately Plaintiffs who are in the best position to understand how to best organize themselves.

Further, Defendants’ concern about how consolidation might impact the Discovery Plan is similarly unfounded. All parties participated in the drafting and negotiation of the Discovery Plan submitted to Judge Singh, and the issue of consolidation, while not specifically reflected in the draft ultimately submitted because the Court has yet to rule on the issue, was discussed at numerous meet and confers and hearings before Your Honor and Judge Singh. Any minor changes required to the Discovery Plan post-consolidation can easily be managed by the parties and submitted to Judge Singh.

Finally, Defendants speculate about further “reshuffling” but these concerns are unfounded. After considering the many issues raised by Defendants on meet and confers, Plaintiffs have submitted a cohesive, efficient plan to move forward with the class claims in this MDL.

For the reasons set forth in Plaintiffs’ opening letter, Plaintiffs respectfully request that the Court: (1) consolidate the DPP Action into the TPP PBM Actions and create a Direct Purchaser Class Track (“DPP Class Track”), and (2) appoint a leadership structure for the DPP Class Track.

Respectfully submitted,

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proposal addresses Defendants’ concerns raised during those meet and confers and is materially identical to what Defendants said they would agree to in email correspondence dated May 21, 2024.

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cc: Hon. Rukhsanah L. Singh (via ECF)
All counsel of record (via ECF)